

NanoSphere Health Sciences Inc.
Terms of Service
Effective Date: 1/2018

1. General Statement / Website Term of Use

The www.nanospherehealth.com website and all related content, mobile applications, and associated services (collectively the "Website"), is a service owned and operated by NanoSphere Health Sciences Inc., Inc. ("NanoSphere Health Sciences Inc.," "us" or "we"). NanoSphere Health Sciences Inc. has adopted these Terms of Service to inform you of your rights and obligations when using the Website and/or when purchasing any NanoSphere Health Sciences Inc. products or goods ("Products") ("Terms of Service" or "Terms"). Your use of this Website, and/or your purchase of any Products constitutes your agreement to the following Terms of Service. If you do not agree to these Terms of Service you may not use the Website or purchase our Products from the websites.

NanoSphere Health Sciences Inc. may, and reserves the right, to from time to time modify, limit, change, discontinue, or replace the website and these Terms of Service at any time. In the event NanoSphere Health Sciences Inc. modifies, limits, changes, or replaces the website or these Terms of Service, your continued use thereafter constitutes your agreement to such modification, limitation, change, or replacement.

It is your responsibility to review these Terms of Service on a regular basis to keep yourself informed of any modifications, limitations, changes, or replacements.

You warrant and agree that you are of legal minimum purchasing age in the jurisdiction in which you reside. It is your responsibility to check and understand the local laws in your jurisdiction regarding the legal purchasing age in order to purchase from or access our Website. NanoSphere Health Sciences Inc. does not warrant or guarantee that compliance with these Terms of Service will be sufficient to comply with your obligations under applicable laws where you reside or where you use the Website.

Please read these Terms of Service carefully to ensure that you understand each provision.

These Terms contain a mandatory individual arbitration and class action/jury trial waiver provision that requires the use of arbitration on an individual basis to resolve disputes, rather than jury trials or class actions.

2. Eligibility, Safety Acknowledgment, and Registration for a Nanospherehealth.com Account

This is a contract between you and NanoSphere Health Sciences Inc. You must read and agree to these terms before using the Website. If you do not agree, you may not use the Website to register for an account. You may use the Website only if you can form a binding contract with NanoSphere Health Sciences Inc., and only in compliance with these Terms and all applicable local, state, national, and international laws, rules and regulations. Any use of an account via the Website by anyone under 18 is strictly prohibited and in violation of these Terms.

In order to purchase from the Website you must complete the registration process to obtain a user account. You will be required to provide your name, address, e-mail address, phone number and date of birth. You must provide complete and accurate information about yourself during the registration process and you have an ongoing obligation to update this information if and when it changes. We will handle your information consistent with our Privacy Policy, which is incorporated into these Terms of Service by reference.

Our Website contains regulated products, which may include minimum purchasing and usage age requirements. An age verification check will occur during the registration process in order to confirm that you are of legal purchasing age and we may use your provided information to conduct age-verification for your purchases and may deny or cancel your purchases due to such regulations. Only persons of legal purchasing age and that have been age verified can purchase products and participate in any promotions or offers from the Website.

When you create an account, you will be required to create a user ID and password. You agree that you will never share your user ID and password with anyone else for any reason. You agree that only you will use your account. You agree to contact NanoSphere Health Sciences Inc. immediately in the event you become aware of unauthorized access to your account. You agree that you are solely responsible for all activity that takes place in connection with your account and you agree to indemnify and hold harmless NanoSphere Health Sciences Inc. from any damages that arise out of or in relation to use of your account.

You agree that you will not create more than one account. By registering and obtaining an account you affirm that you will follow the Terms & Conditions of this Website and your registration constitutes your consent to enter into agreements with us electronically.

3. Termination of Account

We reserve the right to restrict access to, suspend, disable, terminate, and/or delete your account for any reason that we deem necessary, or for no reason. In the event your account is suspended, disabled, terminated, or deleted, your only option is to request reinstatement of your account by contacting NanoSphere Health Sciences Inc. via the Contact Form. You may not open alternate accounts.

4. Electronic Communication – www.Nanospherehealth.com Account Specific

With the creation of an account you agree that we may send to you electronic notices or other communication regarding this Website. These types of electronic communications will be sent to the email address that was provided during registration and/or the email address associated with your account. The contents of any communication are effective when sent, regardless of when you receive or whether you read the communication. You can stop receiving these notices and communications at any time with the deactivation of your account.

5. Electronic Communication – Marketing Communication

By providing your email address and subscribing to NanoSphere Health Sciences Inc.'s Newsletter, you will receive electronic communications and exclusive offers. These exclusive offers may be unavailable depending on your state and local regulations. All offers are Void Where Prohibited.

The email address provided will be used solely by NanoSphere Health Sciences Inc. and will not be sold to, shared with, or otherwise disclosed to other parties, except as permitted under our Privacy Policy. You can choose to stop receiving these offers at any time by filling out an unsubscribe request, using the unsubscribe option on communications or contacting us using the contact information on the website.

6. Communications with NanoSphere Health Sciences Inc.

Customers and visitors are encouraged to forward comments or other communications to NanoSphere Health Sciences Inc. via www.Nanospherehealth.com, or via e-mail. You agree that you will not transmit content to NanoSphere Health Sciences Inc. that is illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or

otherwise injurious to third parties, or objectionable and does not consist of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailings, or any form of "spam". You agree that you will not use a false e-mail address, impersonate a third party person or entity, or otherwise mislead NanoSphere Health Sciences Inc. as to the origin of a communication. Communications violating the restrictions of this paragraph shall constitute a violation of these Terms of Service, and may result in the termination of your account at the sole discretion of NanoSphere Health Sciences Inc.

Any material or communication transmitted by you to this Website will not be treated as confidential. By submitting any content to us through the Website, you grant us a non-exclusive, irrevocable, royalty free, worldwide, and perpetual license to use that content for any purposes, including, without limitation, a license to reproduce, prepare derivative works, distribute, perform publicly, transmit, broadcast, and display the content. Any ideas, concepts, or other materials transmitted by you to NanoSphere Health Sciences Inc. may be used in any manner, including reproduction, transmission, publication or broadcast without compensation. We have the right, at our sole discretion, to edit or refuse to post content submitted by you. The provisions of this paragraph will survive the termination of these Terms of Service and for the maximum period permitted under applicable law.

7. Payment

You agree to pay for all purchase orders you place through the Website.

Except where noted otherwise, the prices displayed for NanoSphere Health Sciences Inc. products represent the full retail price listed on the product itself. All prices are quoted and payable in US dollars, regardless of where an order is placed or shipped. Foreign exchange rates apply and may depend on the date your order was placed.

Your purchases may also be subject to sales tax, VAT, or other taxes or duties at the point of sale where applicable. Payment of taxes and duties due are your responsibility unless such sales taxes or duties are collected by NanoSphere Health Sciences Inc. at the time of your purchase, in which case NanoSphere Health Sciences Inc. will submit your taxes and/or duties to the appropriate authority on your behalf. NanoSphere Health Sciences Inc. shall not be responsible for failure to pay taxes or duties you owe, unless NanoSphere Health Sciences Inc. has collected such taxes or duties at the time of the purchase.

In the event that you dispute the amount or validity of any payments made to NanoSphere Health Sciences Inc. through this Website, you must notify NanoSphere Health Sciences Inc. in writing, within ten days of payment, of any such dispute by mail or by email at the address or email address listed below. You expressly agree that your failure to notify NanoSphere Health Sciences Inc. of any dispute within ten days of payment will constitute your express waiver of any claims related to the disputed payment.

You agree that you will pay all costs and expenses of collection, including attorneys' fees, incurred by NanoSphere Health Sciences Inc. in the event of failure to make payment.

8. Cancellation Policy

Orders submitted cannot be cancelled once the tracking information has been generated.

Generally, tracking information is generated 24 hours from the time that the order was submitted. To cancel an order placed before tracking information is generated, please contact NanoSphere Health Sciences Inc. Support as soon as possible.

9. Return Policy

In no event will NanoSphere Health Sciences Inc. accept return of and/or issue any refund for purchases made other than through the Website, including purchases made from an authorized NanoSphere Health Sciences Inc. retailer. Products purchased through an authorized NanoSphere Health Sciences Inc. retailer must be returned and refunded through the location from at which the products were purchased.

You have the right to withdraw from the purchase agreement with NanoSphere Health Sciences Inc. and to return any new unused item purchased through the Website for a refund without giving any reason up to fourteen (14) days following the receipt of the item purchased. To exercise the right of withdrawal, you must inform us of your decision to withdraw from the purchase agreement by contacting NanoSphere Health Sciences Inc. Support. If you withdraw, NanoSphere Health Sciences Inc. will reimburse to you all payments received from you, including the costs of shipment, within fourteen (14) days from the day you inform us of your decision to withdraw. However NanoSphere Health Sciences Inc. will not reimburse you for any supplemental costs resulting from your choice of a type of delivery other than the least expensive type of standard delivery offered by us at the time of purchase.

If you elect to withdraw, you must return the new, unused item purchased to NanoSphere Health Sciences Inc. within fourteen (14) days of notifying us of your election. We may withhold reimbursement until we have received the purchased item or you have provided us with evidence that you have sent back the item, whichever is earliest. No refunds will be issued for items not returned within fourteen (14) days of notifying NanoSphere Health Sciences Inc. that you would like to return the items for a refund.

You agree that you will be responsible for the cost of return shipment in the event you elect to withdraw from the purchase agreement and to return an item for a refund.

Because of the nature of the products sold through the Website, for sanitary reasons, NanoSphere Health Sciences Inc. accepts returns of and will issue refunds only for new and unused devices. If the tamper proof seal is broken we will be unable to accept the returned product and we will not issue a refund.

10. Damaged/Incomplete/Incorrect Orders

You have a legal guarantee of conformity in connection with items purchased through the Website. You agree to immediately inspect any goods purchased upon receipt of your purchase order. Please report damaged, incorrect, or incomplete orders to us immediately. If you received an order shipped from NanoSphere Health Sciences Inc. that is damaged, incorrect, or incomplete, please contact NanoSphere Health Sciences Inc. Support immediately to explain the problem with your order and to request a refund or replacement goods NanoSphere Health Sciences Inc. may require you to return damaged items, in which case NanoSphere Health Sciences Inc. will pay for the cost of return shipment.

NanoSphere Health Sciences Inc. does not repair damaged devices nor does NanoSphere Health Sciences Inc. provide spare parts for repair.

11. Product Resale or Other Exploitation Prohibited

You agree not to sell, resell, distribute or make available to others, or otherwise use or exploit for any commercial purposes (including, without limitation, in contests, sweepstakes and/or giveaways) any portion of any Products or services purchased from this Website or otherwise obtained from NanoSphere Health Sciences Inc. or a NanoSphere Health Sciences Inc. representative without prior written permission of an authorized representative of NanoSphere

Health Sciences Inc. Any person or entity that sells, resells, distributes or makes available to others, or otherwise uses or exploits any Products or services for commercial purposes without such prior written permission will void the product warranty and may be subject to civil action and/or criminal penalty, as prescribed by law.

12. Compliance with Law; Indemnification

You agree that your use of any Products and/or NanoSphere Health Sciences Inc. services will comply at all times with all applicable laws and regulations, in all relevant jurisdictions, including without limitation laws and regulations related to product use; resale; and marketing, advertising, and/or other forms of promotion.

You agree to indemnify, defend, and hold harmless NanoSphere Health Sciences Inc. and its subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, liabilities, damages, losses, obligations, costs or debt, expenses (including reasonable attorney's fees), regulatory penalties and enforcement actions arising out of or in connection with: (i) your use of and access to any NanoSphere Health Sciences Inc. Products or services, or this Website, including any data or content transmitted or received by you; (ii) your violation of any term of these Terms, including without limitation your breach of any of the representations and warranties herein or your obligations under this Section 12; (iii) your violation of any third-party right, including without limitation any right of privacy or intellectual property rights; (iv) your violation of any applicable law, rule or regulation; (v) any content that is submitted via your account including without limitation misleading, false, or inaccurate information; (vi) your willful misconduct; or (vii) any other party's access and use of the Website with your unique username, password or other appropriate security code.

13. Counterfeiting

The fight against unauthorized sales and counterfeiting is a long-term commitment to quality and service that is taken seriously by NanoSphere Health Sciences Inc. We advise consumers to be cautious when purchasing products from unauthorized resellers as the quality, reliability and safety of these products is uncertain and in some cases, may expose the user to serious dangers not encountered with genuine NanoSphere Health Sciences Inc. products.

Please refer to our Authorized Retail Location webpage or contact NanoSphere Health Sciences Inc. Support to learn more about authorized dealers. Any Product purchased outside of our exclusive sales network runs the risk of being counterfeit and is not guaranteed under our Warranty, incorporated into these Terms of Service by reference. NanoSphere Health Sciences Inc. shall have no responsibility or liability for any Products purchased outside of our Website and/or Authorized Retailers.

NanoSphere Health Sciences Inc. will not assist with resolving issues pertaining to the purchase of counterfeit products nor will NanoSphere Health Sciences Inc. provide refunds for such purchases.

14. Third Party Links

This Website may contain links to third-party websites. NanoSphere Health Sciences Inc. does not intend these links to be viewed as an endorsement of those websites or their content. If you decide to access third-party websites, you do so at your own risk. Different terms of use may apply to any third-party website.

15. Privacy Statement

For more information about how we use and protect your personal information you may provide through our Website, please click [here](#) to review the Website's Privacy Policy. Note that NanoSphere Health Sciences Inc. reserves the right to change its Privacy Policy at any time without notice.

16. Governing Law, Venue, and Class Action/Jury Trial Waiver

These Terms of Service will be governed by and interpreted under the laws of the State of Colorado, USA, without regard to its principles of conflict of laws. Exclusive venue for any dispute that arises out of or relates to these Terms of Service or your use of the Website will be the state or federal courts of Denver, Colorado. You agree not to bring an action in any other venue and you expressly agree to waive all objections to these venues. You expressly consent to be subject to the personal jurisdiction of the state and federal courts of Colorado. You agree that any cause of action you have that arises out of or relates to these Terms of Service or your use of the Website must be brought by you within one year after the cause of action accrues. Otherwise any such action by you against NanoSphere Health Sciences Inc. is permanently barred.

Governing Law. You agree that: (i) the Website and NanoSphere Health Sciences Inc. Products and services shall be deemed solely based in Colorado; and (ii) the Website and NanoSphere services shall be deemed passive ones that do not give rise to personal jurisdiction over us, either specific or general, in jurisdictions other than Colorado. These Terms shall be governed by the internal substantive laws of the State of Colorado, without respect to its conflict of laws principles. The parties acknowledge that these Terms evidence a transaction involving interstate commerce. Notwithstanding the preceding sentences with respect to the substantive law, any arbitration conducted pursuant to the terms of these Terms shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16). The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. You agree to submit to the personal jurisdiction of the federal and state courts located in Denver, Colorado for any actions for which we retain the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a our copyrights, trademarks, trade secrets, patents, or other intellectual property or proprietary rights, as set forth in the Arbitration provision below, including any provisional relief required to prevent irreparable harm. You agree that Denver, Colorado is the proper forum for any appeals of an arbitration award or for trial court proceedings in the event that the arbitration provision below is found to be unenforceable.

Arbitration. Read this section carefully because it requires the parties to arbitrate their disputes and limits the manner in which you can seek relief from NanoSphere Health Sciences Inc.. For any dispute with NanoSphere Health Sciences Inc., you agree to first contact us via email and attempt to resolve the dispute with us informally. In the unlikely event that NanoSphere Health Sciences Inc. has not been able to resolve a dispute it has with you after sixty (60) days, we each agree to resolve any claim, dispute, or controversy (excluding any claims for injunctive or other equitable relief as provided below) arising out of or in connection with or relating to these Terms, or the breach or alleged breach thereof (collectively, "Claims"), by binding arbitration by JAMS, under the Optional Expedited Arbitration Procedures then in effect for JAMS, except as provided herein. JAMS may be contacted at www.jamsadr.com. The arbitration will be conducted in Denver, Colorado, unless you and NanoSphere Health Sciences Inc. agree

otherwise. If you are an individual using NanoSphere Health Sciences Inc. Products, services, or the Website for non-commercial purposes: (i) JAMS may require you to pay a fee for the initiation of your case, unless you apply for and successfully obtain a fee waiver from JAMS; (ii) the award rendered by the arbitrator may include your costs of arbitration, your reasonable attorney's fees, and your reasonable costs for expert and other witnesses; and (iii) you may sue in a small claims court of competent jurisdiction without first engaging in arbitration, but this does not absolve you of your commitment to engage in the informal dispute resolution process. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Nothing in this Section shall be deemed as preventing NanoSphere Health Sciences Inc. from seeking injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of our data security, Intellectual Property Rights or other proprietary rights.

Class Action/Jury Trial Waiver. With respect to all persons and entities, regardless of whether they have obtained or used the Website or NanoSphere Health Sciences Inc. Products or services for personal, commercial or other purposes, all claims must be brought in the parties' individual capacity, and not as a plaintiff or class member in any purported class action, collective action, private attorney general action or other representative proceeding. This waiver applies to class arbitration, and, unless we agree otherwise, the arbitrator may not consolidate more than one person's claims. You agree that, by entering into this agreement, you and NanoSphere Health Sciences Inc. are each waiving the right to a trial by jury or to participate in a class action, collective action, private attorney general action, or other representative proceeding of any kind.

17. Release and Waiver of Claims; Assumption of Risk

YOU HEREBY AGREE TO THE FOLLOWING, WHICH IS PERMITTED BY LAW: (i) to waive any and all claims that you have or may have in the future against NanoSphere Health Sciences Inc., or any of its distributors, resulting from use of the Website and NanoSphere Health Sciences Inc. Products and services; and (ii) to release NanoSphere Health Sciences Inc. or any of its distributors from any and all liability from any loss, damage, injury or expense that you or any users of this Website and any NanoSphere Health Sciences Inc. Products or services may suffer as a result of the use of any of the foregoing, due to any cause whatsoever, including negligence or breach of contract on the part of NanoSphere Health Sciences Inc., in the design or manufacture of the Website or of any NanoSphere Health Sciences Inc. Products or services. In the event of your death or incapacity, these Terms shall be effective and binding upon your heirs, next of kin, executors, administrators, assigns and representatives.

You hereby expressly waive any and all rights and benefits conferred upon you by the provisions of Section 1542 of the Civil Code of Colorado (or any applicable analogous law), which states:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor.

You and NanoSphere Health Sciences Inc. understand and agree that claims or facts in addition to or different from those which are now known or believed by each of them to exist may hereafter be discovered, but it is your intention to release all claims you have or may have against NanoSphere Health Sciences Inc. and any and all of its successors, subsidiaries, parents,

affiliates, investors, branches or related entities, or those entities' officers, directors, employees, stockholders, partners, members, consultants, agents, attorneys, employee benefit plans or assigns, whether those claims are known or unknown, suspected or unsuspected.

18. Trademarks and Copyright

This Website features trademarks, service marks, logos, text, software, files, graphics, photos, images, design, music, video and data that are the property of NanoSphere Health Sciences Inc. and its affiliates or licensors. This Website also may include trademarks, service marks, logos, text, software, files, graphics, photos, images, design, music, video and data of other third parties. All of these trademarks, service marks, logos, text, software, files, graphics, photos, images, design, music, video and data are the property of their respective owners, and you agree not to use them in any manner without the prior permission of the applicable owner. This Website and all of its content are protected under copyright, trademark and other laws of the United States and other countries.

19. Use of Material from this Website

All content of this Website, including but not limited to, any text, software, files, graphics, photos, images, designs, music, musical compositions, video, audio visual works, and data found on this Website (collectively the "Materials"), are the property of and owned by NanoSphere Health Sciences Inc. or its licensors, and are protected by copyright, trademark, and/or other laws. You expressly agree that you are prohibited from, including but not limited to, the following: reproducing, copying, modifying, displaying, adapting, publishing, translating, performing publicly, reverse engineering, transferring, transmitting, broadcasting, distributing, licensing, selling, creating derivative works of, or gifting, in whole or in part, the Materials. The Website and related content is provided for informational purposes only. Your use of this Website is at your sole risk. This Website is provided on an "as is" and on an "as available" basis. Although we make all reasonable efforts to ensure that the content of the Website is updated and corrected, we do not guarantee the accuracy of any content. The material contained on this Website may contain inaccuracies and typographical errors. You agree that we have no duty to screen content that is provided to the Website by you or others, nor are we liable for such content. We have the right, at our sole discretion, to refuse to post or to edit submitted content. We reserve the right to remove content for any reason, but we are not responsible for any failure or delay in removing such material. Changes are periodically made to the Website and may be made at any time period. If you download any materials from this Website, you do so at your own discretion and risk. You will be solely responsible for any damage to your computer system or data that results from the download of any such materials.

20. DISCLAIMERS OF WARRANTY

NANOSPHERE HEALTH SCIENCES INC. PRODUCTS AND SERVICES, AND THIS WEBSITE, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. USE OF THE FOREGOING IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND TO THE EXTENT NOT COVERED UNDER THE APPLICABLE PRODUCT WARRANTY, NANOSPHERE HEALTH SCIENCES INC. EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WHETHER RELATED TO USE OF THIS WEBSITE OR NANOSPHERE HEALTH SCIENCES INC. PRODUCTS OR SERVICES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM

NANOSPHERE HEALTH SCIENCES INC. OR THROUGH ANY NANOSPHERE HEALTH SCIENCES INC. PRODUCT OR SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE FOREGOING, NANOSPHERE HEALTH SCIENCES INC., ITS SUBSIDIARIES, ITS AFFILIATES, AND ITS LICENSORS DO NOT WARRANT THAT THE CONTENT OR ANY INFORMATION ON THE WEBSITE IS OR WILL BE COMPLETE, ACCURATE, ADEQUATE, RELIABLE, USEFUL, TIMELY, OR CORRECT; THAT THE NANOSPHERE HEALTH SCIENCES INC. PRODUCTS AND SERVICES, AND THIS WEBSITE, WILL MEET YOUR REQUIREMENTS OR BE FREE FROM DEFECTS, INCLUDING PRODUCT OR DEVICE LEAKING; THAT THE SITE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE NANOSPHERE HEALTH SCIENCES INC. PRODUCTS OR SERVICES, OR THIS WEBSITE, IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE WEBSITE IS DOWNLOADED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR MOBILE DEVICE OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD OR YOUR USE OF THE WEBSITE.

NANOSPHERE HEALTH SCIENCES INC. DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, AND NANOSPHERE HEALTH SCIENCES INC. WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

FEDERAL LAW, SOME STATES, PROVINCES AND OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION AND LIMITATIONS OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS AND EXCLUSIONS UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

21. LIMITATION OF LIABILITY

TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, YOU UNDERSTAND AND AGREE THAT NEITHER NANOSPHERE HEALTH SCIENCES INC. NOR ANY OF ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS, LICENSORS, OR THIRD-PARTY CONTENT PROVIDERS SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL, PUNITIVE OR ANY OTHER DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, RELATING TO OR RESULTING FROM: 1) PURCHASE AND/OR USE OF ANY NANOSPHERE HEALTH SCIENCES INC. PRODUCTS OR SERVICES; 2) USE OF, ACCESS TO, OR INABILITY TO USE THIS WEBSITE; 3) USE OR INABILITY TO USE ANY OTHER WEBSITE YOU ACCESS FROM A LINK THROUGH THIS WEBSITE; OR 4) ANY ACTIONS WE TAKE OR FAIL TO TAKE AS A RESULT OF EMAIL MESSAGES YOU SEND US; IN EACH CASE, IN AN AMOUNT EXCEEDING THE AMOUNT YOU PAID TO NANOSPHERE HEALTH SCIENCES INC. HEREUNDER OR \$100.00, WHICHEVER IS GREATER. THIS LIMITATION OF LIABILITY INCLUDES, BUT IS NOT LIMITED TO, DAMAGES FOR ERRORS, OMISSIONS, INTERRUPTIONS, DEFECTS, DELAYS, COMPUTER VIRUSES, LOSS OF PROFITS, LOSS OF DATA, UNAUTHORIZED ACCESS TO AND ALTERATION OF TRANSMISSIONS AND DATA AND ANY OTHER TANGIBLE OR INTANGIBLE LOSSES. THIS LIMITATION APPLIES REGARDLESS OF WHETHER THE DAMAGES ARE CLAIMED UNDER THE TERMS OF A CONTRACT, OR AS A RESULT OF NEGLIGENCE,

OR OTHERWISE ARISE OUT OF OR IN CONNECTION WITH THE USE, INABILITY TO USE, OR PERFORMANCE OF THE INFORMATION, SERVICES, PRODUCTS OR MATERIALS AVAILABLE FROM THIS WEBSITE, AND EVEN IF WE OR OUR REPRESENTATIVES HAVE BEEN NEGLIGENT OR IF WE OR OUR REPRESENTATIVES HAVE BEEN NEGLIGENT OR HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME JURISDICTIONS DO NOT ALLOW LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, ALL OR SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

22. Miscellaneous

Severability: A finding that any term or provision of these Terms of Service is invalid or unenforceable will be removed from these Terms of Service and will not affect the validity or enforceability of the remaining Terms of Service.

Assignment: These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by NanoSphere Health Sciences Inc. without restriction. Any attempted transfer or assignment in violation hereof shall be null and void.

No waiver by NanoSphere Health Sciences Inc. of any breach of this Agreement is effective unless in writing.

You agree that these Terms of Service, the Privacy Policy, and our Warranty, which are incorporated by reference, constitute the entire agreement between you and NanoSphere Health Sciences Inc. with respect to the Website and your relationship with NanoSphere Health Sciences Inc. and that there are no further understandings, agreements, or representations with respect to the Website that are not specified in these Terms of Service.

All notice required or permitted under these Terms of Service shall be made in writing by mail or by email to:

NanoSphere Health Sciences Inc., Inc.
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Suite 600
Greenwood Village, CO 80111
info@nanospherehealth.com